CIDAC 00 TL4794
Centro de Docum
19861

EXTERNAL

AI Index: ASA 21/44/85
Distr: CC/CO

Amnesty International
International Secretariat
1 Easton Street
London WC1X 8DJ
United Kingdom

Date: December 1985

UNFAIR TRIALS AND POSSIBLE TORTURE IN EAST TIMOR

Summary

In 1984 and 1985, the Indonesian Government pointed to trials of political prisoners in Dili, East Timor, as evidence that the human rights situation in the territory had improved, and that prisoners were no longer being detained without charge or trial. Amnesty International is concerned at reports suggesting that these trials may not be fair, that people may be detained for interrogation by the Indonesian military in outlying districts of East Timor without charge, and that the detainees may be subject to torture and ill-treatment during the period of their detention.

Reports of Torture

An unknown number of people are reportedly being held in district military or police commands outside Dili for questioning in connection with alleged or suspected involvement with the Frente Revolucionaria de Timor Leste Independente (Fretilin), the armed resistance movement in East Timor which opposes Indonesian occupation of the territory. Amnesty International is concerned at reports that prisoners arrested in May 1985 in the district of Lautem, in eastern East Timor, were tortured while undergoing interrogation.

According to these reports, six people from the village of Irifalai were arrested on 4 May on suspicion of Fretilin involvement: Cristovao DA COSTA, a neighborhood head; Carlos Jose MARQUES, a teacher; Armindo NUNES, Amelio NUNES, and Agusto DOS SANTOS, junior secondary school students; and Cornelio AMARAL (occupation unknown). They were reportedly taken from Irifalai to Lospalos, the district capital, where they were tortured by Indonesian military personnel. They are said to have been detained in Lospalos along with 20 others including the following people:

Carlos FREITAS
Eduardo PEREIRA
Francisco
Afonso LOPES
Carlos NUNES
Joaquim AMARAL

It is not known when the above six people were arrested. Five other people from the Lautem district were also arrested in May, according to reports, including Carmelinda DA SILVA, 22, a teacher at the Fuiloro Mission; Gil FERNANDES, from Lipolo; LAMBERTO, from Funu; Armindo RIBEIRO, from Berekik; and Mariana MARQUES, from Moapitine. They were also said to have been tortured by the Indonesian military in Lospalos.

Amnesty International has not been able to confirm these reports, although Carlos Jose MARQUES may be the same as a Jose MARQUES whose name

appears on an Indonesian Government list of cases submitted to the public prosecutor in May 1985; that list indicates that Jose MARQUES is from Lospalos.

The reports of ill-treatment of people detained by Indonesian authorities in district military command headquarters and other military buildings raise questions, however, about detention without charge or trial in East Timor. The Indonesian government has maintained that no prisoners are held outside Dili (see Far Eastern Economic Review, 8 August 1985), and that all political prisoners are detained in the Comarca, the former Portuguese prison while all common criminals are held in the newly built Bekora Prison. Both prisons are in Dili. Press accounts have quoted Indonesian officials as stating that all prisoners either have been tried or are scheduled for trial. An article in the Indonesian newspaper Sinar Harapan (3 September 1985) noted that as of September 1985, there were 28 untried and 129 convicted prisoners.

In addition to the above-mentioned reports of torture of detainees in Lautem district, there are other indications that detainees are held outside Dili in the custody of district military and police officials, although the Indonesian Government reportedly does not consider them "prisoners" but rather as people being temporarily held for interrogation purposes. These indications are as follows:

--an article in Sinar Harapan (29 October 1985) notes that local police and prosecutors often have to execute justice "on the spot"--there is no indication how--because of the time and expense needed to send suspects to East Timor's only court of first instance, in Dili, for trial. (The article notes that there are now six prosecutor's offices in Dili, Baucau, Maliana, Liquisa, Ermera, and Pante Makassar Ambeno, formerly Oecusse.)

--the Far Eastern Economic Review article cited above which notes that foreign journalists in East Timor in late July observed "what looked like a prisoner transport van labelled 'Department of Detention' well to the west of Dili on a road to the mountainous interior."

--the official lists of prisoners indicating that most of those tried in Dili come from outside the capital city. Since May 1985, for example, those tried include three people from Lospalos, five from Same, eight from Manatuto, and 14 from Viqueque. It is not known how long they were held in these districts prior to transfer to Dili or under what conditions.

Amnesty International is concerned about the well-being of people detained outside Dili, even if they are eventually sent to Dili for trial, because it is during a detainee's first days in custody that torture is most likely to occur. As the Amnesty International publication, Torture in the Eighties notes, "these vulnerable hours are usually spent incommunicado, when the security forces maintain total control over the fate of the detainee, denying access to relatives, lawyer, or independent doctor." In East Timor, to Amnesty International's knowledge, there are no lawyers available outside Dili, and regular visits by international organizations reportedly are not made to district military commands. There may thus be insufficent safeguards in place to prevent torture from occurring.

Amnesty International has urged the Indonesian Government to clarify whether East Timorese detained in outlying districts are protected by the

provisions of the Indonesian Criminal Procedures Code (KUHAP) which state that if arrested, suspects are to be presented with an official warrant and are to be permitted immediate access to family and legal counsel. Amnesty International has also urged the Government of Indonesia to ensure that all persons taken into custody in East Timor be treated in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners. The organization has urged the Indonesian authorities to investigate reports of torture during interrogation in Lautem District and if these are found to be accurate, to bring those responsible to justice.

Trials in Dili

Amnesty International continues to be concerned about the fairness of trials of political prisoners in Dili. In December 1983, the Indonesian Government began for the first time to bring to trial East Timorese alleged to having links with Fretilin. Since then, almost 200 prisoners are believed to have been tried in Dili District Court, almost all of them under Articles 106, 108, and 110 of the Indonesian Criminal Code, which relate to conspiring to bring about the secession of a part of state territory or engaging in armed rebellion. (The only exceptions, to Amnesty International's knowledge, were two prisoners charged respectively with violating the duties of a civil servant and slandering the President of the Republic of Indonesia.) Sentences have ranged from two months to 17 years; those tried most recently, in July 1985, have reportedly received sentences in the one-to-three years range.

Since it first became aware of the trials in February 1984, Amnesty International has urged the Government of Indonesia to make information about them publicly available, including names of those tried, charges against them, background to and circumstances of their arrest, place and duration of pre-trial detention, and current place of detention. In June 1985, the Indonesian Government made publicly available a list of 154 people tried between December 1983 and March 1985 on charges relating to alleged involvement with Fretilin. (A later version of the list noted that the total tried by March 1985 was 157 people but that three of the names were unavailable to the compilers of the list at the time it was drawn up.)

Amnesty International recently obtained another Government list dated 28 May 1985, which listed 31 names of people whose case dossiers had been submitted to the public prosecutor in Dili. Since such a submission is the first formal step in bringing the case to trial, there is reason to believe that all 31 have either been tried or are on trial at the time of this writing.

A third list obtained by Amnesty International, which is signed by Judge Siregar, head of the Dili District Court, and dated 23 July 1985 includes the names of eight prisoners tried in July. One of the names on the May list, Thomas Belo, appears on the July list as having been tried and convicted. The July list is the most detailed of the three, and contains the names, ages, occupations, and places of origin of the prisoners tried, as well as the charges against them, the date of their convictions, and their sentences.

The three lists taken together indicate that as many as 195 East Timorese may have been tried for political offences since December 1983 (157 through March 1985, 30 whose trials began after May 1985--not including Thomas Belo--and eight who were tried in July 1985.)

These lists are important, not only for the information they provide on the prisoners concerned, but also because they permit cross-checking against unofficial lists of persons reportedly "disappeared" and executed in East Timor. Only after the June 1985 list was released by the Indonesian Government, for example, did it become clear that three people reported by Amnesty International sources to have "disappeared" after August 1983 were in fact alive and in custody: Jorge Pinto, Afonso dos Santos, and Americo Branco. Amnesty International beieves that other "disappeared" persons may be in the custody of the Indonesian security forces, and for this reason urges the Indonesian government to make available lists of all prisoners, including those not yet tried, and those reported to be "held for interrogation" in outlying districts of East Timor.

Fairness of the Trials

Amnesty International has repeatedly stated its concerns about the fairness of the trials, and recent information from press and government sources has heightened those concerns.

All prisoners tried thus far have reportedly pleaded guilty, and many different explanations have been given to account for the failure of defendants to contest the charges against them. According to deefence lawyers interviewed by the Far Eastern Economic Review (8 August 1985), guilty pleas save time. "The prosecutor," according to the article, "simply establishes the circumstances of the alleged crime and the defence seeks only to lighten the sentence." A different explanation of the guilty pleas was given by Judge Siregar of the Dili District Court in an interview with the Indonesian daily, Sinar Harapan (3 September 1985), who said all defendants in East Timor pleaded guilty because they were honest and never denied anything. He used the same reason to explain why not a single defendant had made an appeal. Finally, Sinar Harapan in the same article reported that security officials had told a visiting parliamentarian that all defendants pleaded guilty because the evidence against them was so strong and most of the accused had been caught in the act. Amnesty International is concerned that these statements indicate that the presumption of innocence of the accused may be being violated in these trials, and that prisoners may be pressured into pleading guilty.

Amnesty International is concerned that the defendants may be given no choice other than a government-appointed defence team. The defence lawyers, according to Indonesian Government officials, are appointed by the court. All 195 prisoners have been defended by the same three-person defence team flown in from Kupang, West Timor. The three, Merri Dobo, Asmah Achmad, and Saartje Seubelan, are from the Trisula Legal Aid Institute in Kupang; Amnesty International does not know whether the Institute has formal affiliations to the Government.

Amnesty International is also concerned that the reported failure of any defendant to appeal his or her conviction may indicate that defendants are actively discouraged from making an appeal. In the Dutch-derived Indonesian legal system, like that of most continental European countries, both the defendant and the prosecutor may appeal the decision of the court of first instance. If a defendant makes an appeal in Indonesia, the prosecution usually does as well, and in political trials, this often results in the High Court's ruling in favor of the prosecution and meting out a substantially longer sentence, which discourages many prisoners from appealing in the first place. In the case of a Muslim activist accused of

involvement in bombing Chinese-owned bank offices in Jakarta, the sentence was raised from 18 years to life on prosecutorial appeal; in the case of another Muslim activist accused of terrorist activities, the sentence was raised from life imprisonment to death. Amnesty International has urged the Indonesian Government to allow a qualified international trial observation mission to East Timor to investigate all aspects of trials of political prisoners, including the application of the appeals process.